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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/448,420	11/22/1999	MICHAEL SEUL	42970-3	5017

23973 7590 04/11/2006

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EXAMINER

WANG, ANDREW J

ART UNIT	PAPER NUMBER
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1639

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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Eric Mirabel
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In re Application of :
Michael Seul et al. :
Serial No. 09/448,420 : DECISION ON PETITION
Filed: November 22, 1999 :
Attorney Docket No.: 42970-3 :

This Letter is in response to the Petition under 37 C.F.R. 1.97(e) filed on December 8, 2005 to consider the Information Disclosure Statement filed on January 10, 2005.

BACKGROUND:

A review of the file history shows that the Applicant filed an Information Disclosure Statement (IDS) on January 10, 2005, indicating that the IDS was submitted prior to the issuance of a first Office action on the merits. The Examiner subsequently lined through the IDS and stated that the IDS was not considered since it was not accompanied with a fee and statement as prescribed under 37 C.F.R. 1.97(d). The Application was then forwarded to the BPAI for disposition of the Appeal, which resulted in the Examiner being reversed on all remaining grounds of rejection.

DISCUSSION:

After reviewing Applicants' IDS submission on January 10, 2005, it appears that Applicants have errantly indicated that IDS was being submitted prior to the issuance of a first Office action on the merits, which is inaccurate. The IDS was submitted after the filing of a Reply Brief and subsequent BPAI remand. The examiner correctly noted that the IDS submission was not compliant with 37 C.F.R. 1.97(d and e), reproduced below:

- (d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:
 - (1) The statement specified in paragraph (e) of this section; and
 - (2) The fee set forth in § 1.17(p).
- (e) A statement under this section must state either:
 - (1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in

a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

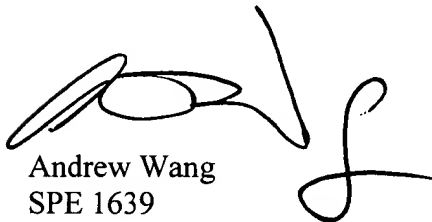
37 C.F.R. 1.97(d and e) clearly sets forth that Applicants must provide the fee set forth in § 1.17(p) **and** provide a statement as specified in subparagraph (e). Applicants **have not** provided such a statement to accompany the instant Petition.

DECISION

Applicants' petition is **DENIED** since Applicants have not provided the required statement as set forth in 37 C.F.R. 1.97 (e).

This application will be forwarded to the Examiner for final disposition according to the BPAI decision mailed November 30, 2005.

Should there any questions regarding this decision, please contact the undersigned by mail addressed to the Director, Technology Center 1600, PO BOX 1450, Alexandria, VA 22313-1450, or by telephone at (571) 272-0811 or by Official Fax at (571) 273-8300.



Andrew Wang
SPE 1639